

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

ELLEN L. LAKE, :  
Plaintiff : CIVIL ACTION NO. 1:20-376  
v. : (JUDGE MANNION)  
KILOLO KIJAKAZI<sup>1</sup> :  
Acting Commissioner of :  
Social Security, :  
Defendant :

ORDER

Pending before the court is the report of United States Magistrate Judge Gerald B. Cohn, which recommends that the decision of the Commissioner of Social Security denying plaintiff's benefits under the Act be vacated and the case remanded to the Commissioner to develop the record fully, conduct a new administrative hearing and appropriately evaluate the evidence. (Doc. 22). No objections have been filed to the report and recommendation.

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<sup>1</sup> Pursuant to Fed.R.Civ.P. 25(d), Kilolo Kijakazi, the current Acting Commissioner of Social Security is substituted for former Commissioner of Social Security Andrew Saul as the named defendant in this action.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In considering the plaintiff's appeal of the decision of the Commissioner denying her claim for Supplemental Security Income and Disability Insurance Benefits, Judge Cohn agreed with the plaintiff that the residual functional capacity and hypothetical posed to the vocational expert that the plaintiff was capable of a reasoning level three contradicts the Administrative Law Judge's finding of a moderate limitation in understanding, remembering or applying information, and contradicts the opinions of two medical experts who concluded that the plaintiff demonstrated a moderate limitation in attention and concentration and is therefore capable of carrying out only very

short and simple instructions. Judge Cohn further determined that the Administrative Law Judge erred in concluding that the plaintiff was not disabled pursuant to the Medical-Vocational Rule (Grids) without evidence supporting a finding that the non-exertional impairments did not erode the occupational base.

Upon review of Cohn's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Cohn to his conclusions. As such, the court will adopt the report and recommendation in its entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**(1) The report and recommendation of Judge Cohn (Doc. 22) is**

**ADOPTED IN ITS ENTIRETY** as the decision of the court.

**(2) The decision of the Commissioner of Social Security denying the plaintiff benefits under the Act is VACATED and the instant action is REMANDED** to the Commissioner to develop the record fully, conduct a new administrative hearing and appropriately evaluate the evidence in accordance with discussion outlined in Judge Cohn's report.

**(3) The Clerk of Court is directed to CLOSE THIS CASE.**

s/ Malachy E. Mannion  
**MALACHY E. MANNION**  
**United States District Judge**

**DATE: January 19, 2022**

20-376-01